

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION

UNITED STATES OF AMERICA)
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)
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v.) CRIMINAL NO. 2:20CR00017-MFU
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)
SAMUEL SILVA)

MOTION FOR NOTICE OF OTHER CRIMES EVIDENCE

Samuel Silva, through undersigned counsel, and pursuant to the Fifth, Sixth, and Eighth Amendments to the U.S. Constitution and Rule 404(b) of the Federal Rules of Evidence, hereby moves this Court to order the government to disclose, no less than three months before the date on which trial is set to commence, notice of the general nature of any crime, wrong, or other act (hereafter other acts) evidence that the government intends to attempt to introduce at trial pursuant to Rule 404(b).

The government alleges that, on September 14, 2018, Samuel Silva committed the premeditated killing of Abraham Aldana in violation of 18 U.S.C. § 7 and 18 U.S.C. §1111. Doc. 1. If there are any allegations of other acts evidence that the government intends to try to use during trial, then Mr. Silva has a right to investigate them so that he can present a defense and confront the witnesses against him.

The use of other crimes, wrongs, or other acts evidence is highly regulated. Federal Rule of Evidence 404(b) “generally prohibits the introduction of extrinsic acts that might adversely reflect on the actor’s character, unless the evidence bears upon

a relevant issue in the case such as motive, opportunity, or knowledge.” *Huddleston v. United States*, 485 U.S. 681, 685 (1988). Because “other crimes” evidence is generally inadmissible, the prosecution must provide notice of any such evidence it wishes to use at trial. The rule requires the government to (1) provide reasonable notice of the general nature of any such evidence that the prosecutor intends to offer at trial; (2) articulate the permitted purpose for which the prosecutor intends to offer the evidence and the reasoning that supports the purpose; and to do so in writing before trial. Fed. R. Evid. R. 404(b). The rule does not set forth a time frame for providing notice to the defense, hence the defense request.

Rule 404(b) specifically requires “reasonable notice” of other acts evidence. The notice requirement “is intended to reduce surprise and promote early resolution on the issue of admissibility.” Fed. R. Evid. 404, Notes of Advisory Committee on 1991 amendment. When the notice requirement was added to Rule 404, the Advisory Committee specifically contemplated “that what constitutes a reasonable request or disclosure will depend largely on the circumstances of each case.” *Id.* In this case, Mr. Silva requests that the Government provide notice at least three months before trial so that he has sufficient time to investigate allegations pertaining to any other crimes. Notice is not meaningful or reasonable if it does not allow the defense time to investigate. Effectuating a rule designed to “reduce surprise and promote early resolution” of admissibility issues will promote a fair trial.

To allow adequate time for counsel and the Court to litigate the admissibility of any such crimes, wrongs, or other acts evidence the government intends to introduce at trial, Mr. Silva respectfully moves this Honorable Court to require the

Government to provide notice of other crimes evidence at least three months before trial. If the Government claims that any of the crimes it wishes to admit are not subject to Rule 404(b), then Mr. Silva moves the Court to order the Government to identify those crimes so that their admissibility can be determined pretrial.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing document was electronically filed via CM/ECF and will be served electronically to counsel of record on this 16th day of June, 2022.

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